



**Greyhills Academy High School**  
**P. O. Box 166**  
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**Tuba City, AZ 86045 - 0166**  
**phone: 928-283-6271**

[www.greyhills.edu](http://www.greyhills.edu)

FILED/ACCEPTED

APR 23 2009

Federal Communications Commission  
 Office of the Secretary

CC: 02-6

**FAX**

To: Marlene H. Dortch, Secretary  
 Federal Communications Commission  
 Office of the Secretary  
 445 12th Street, SW  
 Washington, DC 20554

Re: Request for Waiver --  
 CC Docket No. 02-6

Fax: Pages: 14 total

From: Dickson Hoshnic School: Greyhills Academy High School,  
 BEN: 98649

Sender's Phone: 928-283-6271 Sender's Fax: 928-283-6604

Sender's E-Mail: [dhoshnic@greahills.edu](mailto:dhoshnic@greahills.edu) Date: 4/21/2009

☐ Urgent ☒ For Review ☐ Please Comment ☒ Please Reply ☐ Please Recycle

• **Comments:**

Please review our Request for Waiver regarding the USAC Administrators Decision on Appeal to deny funding and Case #21-810483

We are requesting to Amend our 471 application with the addition of an FRN to our Yr 11 471 application for Internet access or the extension for delivery of service for re-occurring charges for our yr 10 471 application from 6/30/2008 to 6/30/2009 and a corrected non re occurring amount.

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April 20, 2009

Request for Review and Waiver –CC Docket No. 02-6  
Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

**Waiver Request for Year 11 – Form 471 # 604436**

Dear Secretary Dortch:

Please let this letter serve as our request to appeal a USAC Administrator's Decision on Appeal Funding Year 11 2008, dated February 19, 2009.

CC Docket No. 02-6	
Billed Entity Number:	98649
Billed Entity Name:	Greyhills Academy High School PO Box 160 100 Warrior Drive Tuba City AZ 85045-0160 Telephone: 928-283-6271 Fax:: 928-283-6604
Contact Person:	Dickson Hoshnic
E-Mail of Contact:	E-mail: <a href="mailto:dhoshnic@gahs.bia.edu">dhoshnic@gahs.bia.edu</a>
Form 471 Number: yr11	604436
Form 471 Number: yr10	581142
Funding Request Number:	(for Form 471 -581142) FRN 1609931

**Reason for Waiver Request:** We request that our appeal / waiver be considered favorably so that funding for internet access will be provided under the Erate funding mechanism. Non-re occurring cost is \$ 750 original amount plus a correction cost of \$ 4,250, The monthly re –occurring cost is \$ 5,000., annual re-occurring cost is \$ 60,000. total.



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### **Background:**

Greyhills yr10 (Fy 2007 – 08) Funding for Form 471# 581142 - FRN 1609931, was approved on 7/27/2007 and was for Internet access/ Distance learning for the school.

However, the service provider was unable to provide the microwave access on this remote portion of the Navajo reservation (Preston Mesa) until the end of May 2008, and completed the last mile installation only by June 2008. On May 19<sup>th</sup> 2008, we requested delivery extension from 6/30/2008 to 6/30/2009. The extension was approved on July 7<sup>th</sup> 2008.

When filing the form 471 for yr11 (February 21,2008) (fy 2008 – 09), the installation status of this internet circuit was uncertain due to Tribal land approval and as such we could not include it as a funding request. No new bids were received and the original contract document was for 3 years. The filing of Form 471 had to be completed by this date. Three months later, in May of 2008, land and co-location approval was given by the Tribal Government to complete the Microwave circuit for Internet access.

We were of the opinion, that by filing a funding request extension for the yr10 FRN, it would also include the recurring charges. However, when the extension was received, only the non-recurring charges were approved for extension while the recurring charges were not approved beyond June 30, 2008. Additionally due to either USAC server error or applicant error the non re-occurring amount listed in the FRN was \$ 750 not \$ 5,000. No RAL letter was received by the school. Please note that the SLD site completely failed and had errors during the critical final week of the application process.

During the PIA process for yr11 funding in August 2008, we requested to amend our 471 application so that the recurring charges for the internet circuit be included in our yr11 funding request, and the balance of the installation costs amounting to \$ 4,250.

When the FCDL for yr11 was received in November 2008, we realized that this funding amendment request was not included. An appeal to SLD was filed in November 2008 requesting that this additional funding be considered under the Bishop Perry Order FCC – 06 -54a1 notes, Naperville Order DA07-4471a1 notes and as taken from the SLD/USAC website under Applicant - Step 7.

On March 26<sup>th</sup> 2009, we received a letter from USAC denying our appeal stating that new FRN cannot be added during PIA process.



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**Discussion of prior FCC orders:**

1 - We cannot find a prior ruling that directly relates to a case such as ours. Current FCC rules for use of non re occurring costs state that they must be delivered and used during the specific funding year but that non re occurring may be extended pursuant the criteria inserted below.

1. *An applicant may obtain an extension of the deadline to implement non-recurring services from the Universal Service Administrative Company (USAC) if it satisfies one of four criteria set forth in section 54.507(d) of the Commission's rules:*

- (1) the applicant's funding commitment decision letter (FCDL) is issued by USAC on or after March 1 of the funding year for which discounts are authorized;*
- (2) the applicant receives a service provider change authorization or service provider substitution authorization from USAC on or after March 1 of the funding year for which discounts are authorized;*
- (3) the applicant's service provider is unable to complete implementation for reasons beyond the service provider's control; or*

2 - Though our school had a signed and dated multi year contract, by the end of the year 11 filing window in February of 2008 there was no solid evidence that the installation could occur. This was beyond the control of the school or the service provider and was a problem unique to the remoteness of this location and Navajo Indian Reservation.

*In the recent Bishop Perry Order,<sup>1</sup> the FCC directed USAC "to provide all E-rate applicants with an opportunity to cure ministerial and clerical errors on their FCC Form 470 or FCC Form 471, and an additional opportunity to file the required certifications."<sup>2</sup> The FCC further indicated that "applicants shall have 15 calendar days from the date of the receipt of notice in writing by USAC to amend or refile the FCC Form 470, FCC Form 471 or associated certifications."<sup>3</sup>*

3- In an urban environment the engineering and delivery of digital circuits takes place within a short period of time, two to three weeks. Contract negotiations and tribal approval in this case took over 10 months, with significant resources already committed on the part of the service provider. Eventual installation and completion finally occurred months later than the year 11 filing window.

4 - No new bids were received so no alternative service provider could be chosen.



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**5 – Under FCC Order DA 07-1187 we reference the following -**

*Federal Communications Commission DA 07-1187*

*USAC referred the instant Extension Requests to the Commission because it is uncertain whether it may grant the requested relief under the circumstances presented*

2. *Commission was unable to “anticipate every type of circumstance,” the Commission “direct[ed] [USAC] to address such situations on a case by case basis, consistent with the reasoning set forth in this Order.”<sup>1</sup> That is, the Commission gave USAC discretion to determine which situations constitute circumstances beyond the service provider’s control.*

*We find that special circumstances exist to justify a waiver of the Commission’s rules, we find that the departure is warranted and in the public interest.*

**6 – Under FCC Order 07-35 we reference the following -**

*FCC 07-35 -*

*The Commission recently found in Bishop Perry Middle School that, under certain circumstances, rigid adherence to certain E-rate rules and requirements that are “procedural” in nature does not promote the goals of section 254 of Act ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest,*

*In all of these cases, there is no evidence in the record that Petitioners engaged in activity to defraud or abuse the E-rate program. Finally, we find that, for these applicants, denying their requests for funding would create undue hardship and prevent these otherwise eligible schools and libraries from receiving E-rate funding. In some instances here we depart from prior Bureau precedent.<sup>2</sup> For the reasons we describe, however, we find that the departure is warranted and in the public interest.*

**7 – Under FCC Order DA 05-2179 we reference the following -**

*DA 05-2179 -*

3. *Generally, the Commission’s rules may be waived for good cause shown.<sup>3</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>4</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>5</sup> Waiver of the Commission’s rules is therefore*

<sup>3</sup>47 C.F.R. § 1.3.

<sup>4</sup>*Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), cert. denied, 409 U.S. 1027 (1972).

<sup>5</sup>*WAIT Radio*, 418 F.2d at 1157.



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*appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>6</sup>*

*Thus, schools seeking E-rate support using West Virginia state master contracts have two options: (1) they can file their FCC Form 471 applications without a signed contract in place and have their applications rejected for failing to comply with section 54.504(c) of the Commission's rules and the FCC Form 471 contract certification requirement; or (2) they can submit their FCC Form 471 applications after West Virginia has signed the contract extensions or or renewals and have their applications rejected because they were filed after the close of the filing window.<sup>7</sup>*

8 – Under FCC Order DA 08-2376 we reference the following -

*FCC DA-08-2376*

*Circumstances Beyond Applicant's Control. We grant the waiver request of two petitioners who filed their FCC Forms 471 more than 14 days after the FCC Form 471 filing window deadline due to delays caused by circumstances beyond their control.<sup>8</sup> As the Commission discussed in the Bishop Perry Order, when circumstances beyond the applicant's control cause the applicant to miss a deadline on a matter that is procedural, not substantive, a complete rejection of the applicant's funding request is not warranted.<sup>9</sup>*

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<sup>6</sup>*Northeast Cellular*, 897 F.2d at 1166.

<sup>7</sup>The filing window is the period in which applicants must submit their completed FCC Forms 471 in order to have their requests for funding considered.

<sup>8</sup> See Letter from Jim Biwer, Kelso School District #458, to Marlene Dorich, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 10, 2008) (Kelso School Request for Waiver); Letter from Jeff Birch, Cassia Joint School District 151, to Federal Communications Commission (filed June 4, 2008) and Letter from Jeff Birch, Cassia Joint School District 151, to Federal Communications Commission (filed July 15, 2008) (Cassia July Request for Waiver).

<sup>9</sup> See *Bishop Perry Order*, 21 FCC Rcd at 5323, para. 14.



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9 - Under FCC Order DA 08-2376 we reference the following –

FCC DA-08-2372A1

4. Based on the facts and circumstances of this case, and consistent with the Wireline Competition Bureau's (Bureau) decision in *Great Rivers*, we grant Tekoa's Request for Review and remand the underlying application to USAC for processing consistent with this Order.<sup>10</sup> In *Great Rivers*, the Bureau granted a waiver to Great Rivers Education Cooperative, an applicant who, like Tekoa, attempted to extend the deadline for non-recurring services by filing an FCC Form 500 rather than an extension request.<sup>11</sup> Similarly, in this instance, we find that the facts in this case rise to the level of the "special circumstances" necessary for a waiver of USAC's procedural deadline.<sup>12</sup> In reaching this conclusion, we take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>13</sup>

#### **Summary - Request for Waiver to approve funding.**

This is not a case of waste, fraud or abuse. The applications were substantially complete. The circumstances were beyond the control of the applicant or service provider. Without this funding, the school cannot afford the financial burden of the entire cost without Erate support and would it cause undue hardship.

Technically we are not adding a new fm during the yr11 but only requesting that recurring charges approved in yr10 funding be carried over to yr11 funding, also the correction to the non re-occurring charge be made. Note that the service extension already submitted was approved, but only for the non re occurring ( incorrect) amount.

Given the current economic situation, the school is not in a position to pay the full cost for the internet access without the Erate reimbursement. This will put the vulnerable students at a greater disadvantage of not having access to the internet during school year. Due to the low income/high poverty level in this area and also due to it's remote location, most students have no other means of access to technology.

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<sup>10</sup> *Request for Waiver of the Decision of the Universal Service Administrator by Great Rivers Education Cooperative and I-K Electric Company*, CC Docket No. 02-6, Order, 21 FCC Rcd 14115 (Wireline Comp. Bur. 2006) (*Great Rivers*).

<sup>11</sup> *Id.* at 14119, para. 9.

<sup>12</sup> *Id.* Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), cert. denied, 409 U.S. 1027 (1972). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio*, 418 F.2d at 1157. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

<sup>13</sup> *WAIT Radio*, 418 F.2d at 1157.



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Sincerely,

A handwritten signature in black ink, appearing to read "Dickson Hoshnic".

Dickson Hoshnic  
Network Administrator  
Greyhills Academy High School  
PO Box 160  
100 Warrior Drive  
Tuba City AZ 85045-0160  
Telephone: 928-283-6271  
Fax:: 928-283-6604  
E-mail: [dhoshnic@gahs.bia.edu](mailto:dhoshnic@gahs.bia.edu)

**List of Attachments -**

Page 1 -	Fax cover page
Page 2 to 8 -	Request for Waiver
Page 9 to 12 -	Copy of USAC appeal letter
Page 13 -	Administrators Decision on Appeal pdf
Page 14 -	Copy of 36 month contract - Telespectra Internet access





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*"I apologize for this oversight"*

**Background:**

In early August, Mike Daniel with Tech Funds Inc., while working with Mr. Batoff on PLA issues involving this 471, requested adding an FRN to this 471 # 604436. Our supporting document is inserted below and is part of the email sent to Mr. Batoff on Thursday, August 21, 2008 2:41 AM (see Attachment B for email with supporting attachments submitted to Mr. Batoff with our request).

*"Hello Louis,*

*As per our discussion, the Greyhills yr10 Funding for Form 471# 581142 took place on 7/27/2007. However, as discussed the service provider was unable to provision the microwave on the Navajo reservation (Preston Mesa) until End of May 2008, and complete the last mile installation until June 2008. We requested a service delivery extension from 6/30/2008 to 6/30/2009 and received approval for the contract extension request, but it indicated that it was for the non-reoccurring amount only.*

*Since the request was approved, it can not be partially appealed.*

*In addition, the total installation was for \$ 5,000, not \$ 750, so we are requesting the amount of \$ 4,250 balance in this new Frm for yr 11 being requested.*

*This was a multi year contract as indicated in the Forms 470 (both years) and the signed contract, so it meets FCC rules regarding bidding procedures and multi year contracts.*

**7 This Form 470 describes (check all that apply): Form 470 Application Number: 231370000619028**

a. ☐ Tariffed or month-to-month services to be provided without a written contract. A new Form 470 must be filed for non-contracted tariffed or month-to-month services for each funding year.

b. ☒ Services for which a new written contract is sought for the funding year in Item 2.

Check if you are seeking ☐ a multi-year contract and/or ☐ a contract featuring voluntary extensions

*Our Request to add this missing FRN to 471# 604436- multi year contract is below.*

**FRN: FCDL Date:**

**10. Original FRN:**

**11. Category of Service:** Internet Access

**13. SPIN:** 143024464

**15a. Non-Contracted tariffed/Month to Month Service:**

**15c. Covered under State Master Contract:**

**16a. Billing Account Number:**

**17. Allowable Contract Date:** 02/06/2007

**19a. Service Start Date:** 07/01/2008

**20. Contract Expiration Date:** 06/30/2010

**21. Attachment #:** 4

**23a. Monthly Charges:** \$5,000.00

**12. 470 Application Number:** 231370000619028 (yr10)

**14. Service Provider Name:** TeleSpectra, LLC

**15b. Contract Number:** greyhills

**15d. FRN from Previous Year:**

**16b. Multiple Billing Account Numbers?:**

**18. Contract Award Date:** 02/06/2007

**19b. Service End Date:**

**22. Block 4 Entity Number:** 98849

**23b. Ineligible monthly amt.:** \$.00



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23c. Eligible monthly amt.: \$5,000.00    23d. Number of months of service: 12  
23e. Annual pre-discount amount for eligible recurring charges ( 23c x 23d): \$60,000.00  
23f. Annual non-recurring (one-time) charges: 4,250    23g. Ineligible non-recurring amt.: 0  
23h. Annual pre-discount amount for eligible non-recurring charges ( 23f - 23g): \$4,250.00  
23i. Total program year pre-discount amount ( 23e + 23h): \$64,250  
23j. % discount (from Block 4): 90  
23k. Funding Commitment Request ( 23i x 23j): \$57,825.00

FCC 06-54 Bishop Perry ruling

FCC - 06 -54a1 notes

*The Commission may waive any provision of its rules on its own motion and for good cause shown.20 A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.21 In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.22 In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.23*

*In these circumstances, applicants committed minor errors in filling out their application forms. For example, among other problems, applicants inadvertently forgot to fill in a box, had computer problems, used an outdated form that requests primarily the same information as the current one, or misread the instructions. We do not believe that such minor mistakes warrant the complete rejection of each of these applicants' E-rate applications, especially given the requirements of the program and the thousands of applications filed each year. Importantly, applicants' errors could not have resulted in an advantage for them in the processing of their application. That is, the applicants' mistakes, if not caught by USAC, could not have resulted in the applicant receiving more funding than it was entitled to. In addition, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we find that the denial of funding requests inflicts undue hardship on the applicants. In these cases, we find that the applicants have demonstrated that rigid compliance with the application procedures does not further the purposes of section 254(h) or serve the public interest.33*

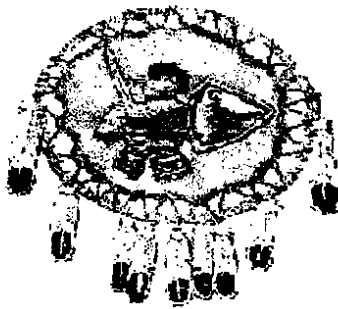
Specifically, USAC shall inform applicants promptly in writing of any and all ministerial or clerical errors that are detected in their applications, along with a clear and specific explanation of how the applicant can remedy those errors. USAC shall also inform applications promptly in writing of any missing or incomplete certifications.

The opportunity for applicants to amend their filings to cure minor errors will also improve the efficiency and effectiveness of the Fund.

16 Id. But note, in the Naperville Order, the Commission determined that USAC should not return an application without consideration for having omitted information required by USAC's minimum processing standards where:

(1) the request for information is a first-time information requirement on a revised form, thereby possibly leading to confusion on the part of the applicants; (2) the omitted information could be easily discerned by USAC through examination of other information included in the application; and (3) the application is otherwise substantially complete. Request for Review by Naperville Community Unit School District 203, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-203343, CC Dockets No. 98-45 and 97-21, Order, 16 FCC Rod 5032,5037-38, paras. 12-15 (2001) (Naperville Order).

DA07-4471a1 - notes and as taken from the SLD/USAC website under Applicant - Step 7 - "Options for RAL Corrections  
To make allowable corrections to a Form 471, mark up a copy of the Form 471 Receipt Acknowledgment Letter (RAL) and return it to USAC. Allowable corrections can be submitted to the RIA reviewer."



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*An applicant may: (2) officially communicate in writing to a USAC Schools and Libraries Division (SLD) Program Integrity Assurance (PIA) representative.*

**Summary:**

Based on the information provided above,

- 1 - We are appealing the decision that an FRN cannot be added during the PIA process and request funding of the \$ 4,250 one time installation cost, plus the \$ 5,000/monthly re occurring cost under eRate year 11 ( \$84,250). *"An applicant may: (2) officially communicate in writing to a USAC Schools and Libraries Division (SLD) Program Integrity Assurance (PIA) representative".*
- 2 - Further, due to Mr. Batoff's failure to provide us with a written or oral denial to our request for adding the FRN, we currently have to pay the full amount of this Priority 1 service monthly. *"(2) the omitted information could be easily discerned by USAC through examination of other information included in the application;"*
- 3 - We have a signed multi-year contract with TeleSpectra, LLC (see Attachment C) for Internet Access for years 10, 11 and 12, meeting FCC/ USAC bid requirements.
- 4 - The monthly amount of \$5,000 per month will be an extreme hardship on our school without the eRate support mechanism for this Priority 1 service. *"Furthermore, we find that the denial of funding requests inflicts undue hardship on the applicants."*
- 5 - We are unable to determine if the one time non reoccurring charge was a typographical error or a USAC web related error during submission, *"(1) the request for information is a first-time information requirement on a revised form, thereby possibly leading to confusion on the part of the applicants."*
- 6 - The service provider was unable to deliver the monthly re occurring services under eRate year 10 due to circumstances beyond his control, though these services were eventually available at the later part of the funding year. No RAL letter was received, end, even if it had there was no certainty of service availability at that time.

Thank you for your consideration.

Sincerely,

Andrew Tah,  
Director of Technology  
Greyhills Academy High School  
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**Universal Service Administrative Company**  
Schools & Libraries Division

**Administrator's Decision on Appeal - Funding Year 2008-2009**

March 26, 2009

Andrew Tah  
Greyhills Academy High School  
P.O. Box 160, 100 Warrior Drive  
Tuba City, AZ 86045-0160

Re: Applicant Name: GREYHILLS ACADEMY HIGH SCHOOL  
Billed Entry Number: 98649  
Form 471 Application Number: 604436  
Funding Request Number(s): 1 Unassigned  
Your Correspondence Received: November 28, 2008

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2008 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1 Unassigned  
Decision on Appeal: Denied  
Explanation:

- During the initial review of Form 471 Application #604436, you requested to add a new FRN to Block 5 for the Internet Access service from TeleSpectra, LLC that was committed via the Funding Commitment Decision Letter in Funding Year 2007, Form 471 Application #551142, but was never invoked. The Funding Commitment Decision Letter was issued before the reviewer could inform Greyhills Academy High School that the addition of a new FRN in the middle of the Fund Year would not be allowable. On appeal you again request that a new FRN be added to Block 5 of Form 471 Application #604436 because PIA did not notify you in a timely manner that the FRN was not added during the initial review and you owe the service provider the full amount of the previously committed FRN (#609931). Program Rules do not allow the addition of a new FRN during the PIA Review, nor is the addition of an FRN on the list of

160 South Lincoln Road, P.O. Box 902, Whippany, New Jersey 07981  
Visit our website at [www.usac.gov](http://www.usac.gov)

No. 121-07

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